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Document Review Section  
517-334-6302

Annual Report Section  
517-334-6300

MEETING MINUTES AS REQUIRED  
BY SECTION 9 OF ACT NO. 267 OF  
THE PUBLIC ACT OF 1996

Proposed Minutes Prepared  
by: Dennis Irwin-Stabenow  
for State Boundary Commission

Docket #96-AP-7 / Newaygo County  
Ashland Township / City of Grant

### MEETING INFORMATION

WHERE: Lansing

WHEN: February 27, 1997

TYPE: Adjudicative - Findings of Fact and Order

COMMISSIONERS PRESENT:  
Kenneth VerBurg  
Lloyd Walker  
Norman Ochs

COMMISSIONERS ABSENT:  
David Rutledge  
Hope Stratton  
Vincent Kemperman

MOTION: To adopt the draft Findings of Fact and to recommend that the Director sign the order.

MOVED BY: Walker

SUPPORTED BY: Ochs

VOTE:

AYES: All

**STATE OF MICHIGAN  
DEPARTMENT OF COMMERCE  
BEFORE THE STATE BOUNDARY COMMISSION**

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In the matter of:

Boundary Commission  
**Docket #96-AP-7**

The proposed annexation of  
territory in **Ashland Township**  
to the **City of Grant**

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**SUMMARY OF PROCEEDINGS, FINDINGS OF FACT AND ORDER**

This matter of the proposed annexation of the following territory in Ashland Township to the City of Grant and described as follows:

Part of the Southeast 1/4 of Section 24, T11N, R13W, Ashland Township, Newaygo County, Michigan, described as Beginning at the South 1/4 corner of said Section; thence N 0°00' E 2202.55 feet along the North-South 1/4 line of said section to the Place of Beginning; thence S 89°53'40" E 198.0 feet along the South line of the North 440.0 feet of the Southeast 1/4 of said Section; thence N 0°00' E 440.0 feet; thence N 89°53'40" W 198.0 feet along the East-West 1/4 line of said Section; thence S 0°00" W 440.0 feet along the North-South 1/4 line of said Section to the Place of beginning, subject to Right-of-Way for Highway M-37 over the West 33.0 feet thereof, also subject to easements, restrictions and rights of way of record.

This matter came before State Boundary Commissioners VerBurg, Rutledge and Walker, and Newaygo County Commissioners Stratton and Kemperman for final adjudication in Lansing, on **January 30, 1997**. The Commission, being fully advised as to the positions of the respective parties, made its findings on said date.

**SUMMARY OF PROCEEDINGS**

- A. On **June 7, 1996**, a petition was filed by Linda Berris as Trustee of the Linda Berris Trust, property owner, asking for the annexation of a portion of Ashland Township into the Home Rule City of Grant.
- B. On **July 16, 1996**, an adjudicative meeting of the State Boundary Commission was held in Lansing to determine the legal sufficiency of the petition. The petition was declared to be legally sufficient, pursuant to Public Act 191 of 1968, as amended, and Public Act 279 of 1909, as amended.
- C. On **October 9, 1996**, a public hearing was held in Ashland Township to receive testimony given pursuant to Public Act 191 of 1968, as amended.

- D. On **January 30, 1997**, an adjudicative meeting of the State Boundary Commission was held in Lansing to reach a decision based on the information received.

### **INFORMATION TO BE NOTICED**

1. **The Petitioner stated that annexation of their 2 acres was desired because:**

--**The Michigan Department of Public Health** will not allow their facility (gas station, convenience store, Subway franchise) to remain open with the use of a septic system, and access to the City's sewer is necessary for continued operation of their businesses.

--**The Township and City have been unable to reach an agreement** providing for a permanent City sewer and water connection to the property.

--**A permanent connection to the City's water system** is needed because increased usage has put a strain on their well and because a **deed restriction** has been placed on the Petitioner's property preventing the use of wells if the property is sold because of ground water contamination from a previous gas station.

--**Convenience stores are often targets** of robberies and the City could provide more immediate and comprehensive protection.

2. **The City supported the proposed annexation because:**

--**The Township would not consent** to a connection of the property proposed for annexation to the City water or sewer system without a Franchise Agreement to provide water and sewer to the Township as a whole.

--**The 17 jobs** created by the Petitioner's business would be lost if it closed due to a lack of access to the City sewer system.

3. **The Township opposed the proposed annexation because:**

--**water and sewer** could be provided to the petitioner if the City agreed to a Franchise Agreement.

4. **The Township cited a Michigan Supreme Court ruling in *Washtenaw County Health Dept. v T & M Chevrolet*, 406 Mich 518 (1979)** that when a sewer connection is necessary because of public health concerns, a connection may be ordered by the Courts without annexation of the property in question.

--**The Township argued** that the above case was relevant because the City of Grant insisted on annexation as a pre-requisite to receiving sewer and water services even though a public health concern existed.

**--The Petitioner argued** that the above case was not relevant because the City did not condition the sewer connection for the property on that property being annexed to the City. Rather, the City was only of the opinion that it was obligated by Article 7, Section 29 of the 1963 Michigan Constitution to obtain Ashland Township's consent prior to permitting a connection to the City of Grant's sewer system.

**--The Petitioner argued** that in the case of the *City of South Haven v. South Haven Charter Township*, 204 Mich App 49 (1994), the Court of Appeals ruled that the circuit courts have no authority to order a Township to grant its unconditional consent to a City for a sewer connection, even in the instance of a public health concern. Therefore, if the annexation petition was denied and the Township continued to refuse to grant its unconditional consent to the City for the sewer connection, the Petitioner would be put out of business because she could not comply with the State Health Department's mandate to discontinue use of the septic system and connect to the City's sewer system.

**--The City and Township reported** that the City is able to provide water and sewer to the property proposed for annexation and the Township cannot and has no plans to do so.

**--The City and Township submitted** a copy of the STIPULATION AND ORDER ALLOWING TEMPORARY SEWER CONNECTION granted by the Newaygo County Circuit Court. This Order provides for a temporary sewer connection pending a decision by the State Boundary Commission on the Petitioner's annexation petition.

### **THE COMMISSION FINDS THAT**

1. The petitioner needs permanent access to the City of Grant sewer and water systems for economic and public health reasons.
2. The Petitioner needs the faster, more comprehensive police services of the City of Grant because of the nature of her businesses.
3. The Petitioner was willing to work with the City and the Township to secure City sewer and water services.
4. The Petitioner began construction of her new facility in good faith but ran into unexpected public health problems with the septic system.

5. The Petitioner, at her own expense, made every attempt to solve the public health problem with the septic system but was unable to do so.
6. The property proposed for annexation has a deed restriction prohibiting the use of wells if the property changes ownership.
7. The City of Grant and Ashland Township have not been able to reach a franchise agreement to provide water and sewer to the Petitioner's property prior to or during the eight months since the petition was filed.
8. The City of Grant did not condition a connection with the City sewer and water systems to the Petitioner's property on annexation.
9. The Petitioner had no recourse but to petition the State Boundary Commission for annexation to the City of Grant because of the inability of the City and Township to cooperate on this issue.
10. The Petitioner's business is of economic value to the area.

### **IN CONCLUSION, THE COMMISSION FINDS THAT**


1. The Commission has considered all of the testimony and the public record regarding the annexation petition.
2. On **January 30, 1997**, at an adjudicative meeting held in Lansing, State Boundary Commissioners VerBurg and Walker, and Newaygo County Commissioners Stratton and Kemperman voted to recommend approval of the annexation to the Director of the Department of Consumer & Industry Services and State Boundary Commissioner Rutledge voted to recommend denial of the petition.
3. On **February 27, 1997**, at an adjudicative meeting held in Lansing, State Boundary Commissioners VerBurg and Walker and Newaygo County Boundary Commissioner Ochs voted to recommend approval of the Draft Findings of Fact and Order to the Director of the Department of Consumer & Industry Services.

## **ORDER**

**DOCKET #96-AP-7**

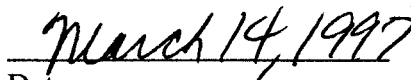
**IT IS ORDERED THAT** this order approving the annexation of certain territory in Ashland Township into the Home Rule City of Grant shall be final and effective on **the date signed by the Director of the Department of Consumer & Industry Services.**

**IT IS FURTHER ORDERED THAT** the Executive Director shall forthwith transmit a certified copy of these Findings of Fact and Order to the petitioner and to the clerks of the City of Grant, Ashland Township, and Newaygo County.



Kathleen M. Wilbur, Director

Michigan Department of Consumer & Industry Services



Date